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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/763,798	01/23/2004	Joshua William Johnson	S1011/20171	7933

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EXAMINER

MCNEIL, JENNIFER C

ART UNIT PAPER NUMBER

1775

DATE MAILED: 11/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/763,798

Applicant(s)

JOHNSON, JOSHUA WILLIAM

Examiner

Jennifer C. McNeil

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 September 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 and 7-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 7-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 5, and 7-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Decamp (US 3,002,308) in view of McAdams (US 3,793,126). Decamp teaches an artificial plant comprising a branch (2), a threaded interface at one end of the branch (8), a stem (16), and a simulated flower (23). The branch (2) is considered a main stalk member (col. 1, lines 28-31), and the stem (16) is considered the flexible connection means. The stalk (branch) has the screw thread (8) and is considered to engage the stem (16) via insertion of a screw. The stem is adapted to be selectively oriented by cooperating with the surfaces of the flower cluster sepal (col. 1, lines 45-49). The individual parts of the plant are preferable prefabricated from a moldable plastic material but Decamp does not specifically teach that the stems or additional components of the artificial plant are flexible. McAdams teaches a bouquet having flexible stems for arrangement of the flowers heads in a desirable configuration. McAdams teaches that the stems are wire and are coated with plastic. One of ordinary skill in the art at the time of the invention would have found it obvious to

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provide the stems of Decamp in a manner which allows for flexible arrangement of the flowers in a desirable configuration.

Regarding claims 2 and 16, the stem (16) is connected at one end to the branch and at the opposite end to the head (19). Regarding claim 5, the stem is considered a rod like member. Regarding claim 7, the branch is tapered at a point where it articulates with the stem. Regarding claim 8, the head member has a curved underside as shown at (19) and has an attachment means via a screw thread (20). Regarding claim 9, the head member is tapered and comprises a screw thread. Regarding claim 11, as shown in Figure 2, the branch widens toward the base. Regarding claim 15, the flower head would be movable in any direction.

Regarding claims 10, 12, 13, and 14, Decamp teaches an artificial plant as discussed above including mounting means (37, 38). Decamp does not teach additional mounting means. The use of a socket or spike instead of a hook is considered a design choice, which would be obvious to one of ordinary skill in the art.

Regarding claims 13 and 14, it would have been obvious to one having ordinary skill in the art at the time of the invention to use a ceramic material as the artificial flower, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious engineering choice (*In re Leshin*, 125 USPQ 416). It would have been obvious to use a weather resistant material to prevent degradation upon exposure.

Claims 1-5, 7-19, are rejected under 35 U.S.C. 103(a) as being unpatentable over Descamp (US 3,002,308) in view of Bowen (US 206,387). Descamp teaches an artificial plant comprising branches or secondary stalks attached to a central stalk (1). The secondary stalks are adjustable as

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shown in Figure 2. Descamp does not teach alternative means for attaching the secondary stalks to the central stalk. Bowen teaches an artificial plant comprising a central stalk (A), and two means for attaching the appendages to the central stalk. One means uses spirally curved wires, and another uses apertures and pins. Webster's dictionary defines "wire" as a metal in the form of a usually very flexible thread or slender rod. As Bowen teaches that the wire (understood to be metal from the definition), may be spirally wound which would inherently impart a spring quality. Therefore Bowen is considered to teach a spring connection means for the secondary stalks and the central stalk. It would have been obvious to one of ordinary skill in the art at the time of the invention to attach the secondary stalks to the central stalk by the means taught by Bowen as they are clearly taught to be an effective attachment means for artificial plants, and furthermore is generally considered an engineering and/or design choice. Regarding claim 4, it would be obvious to use any known metal material that meets the desired structural features, *In re Leshin* 227 F.2d 197, 125 USPQ 416 (CCPA 1960).

Regarding claims 10, 12, 13, and 14, Decamp teaches an artificial plant as discussed above including mounting means (37, 38). Decamp does not teach additional mounting means. The use of a socket or spike instead of a hook is considered a design choice, which would be obvious to one of ordinary skill in the art.

Regarding claims 13 and 14, it would have been obvious to one having ordinary skill in the art at the time of the invention to use a ceramic material as the artificial flower, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious engineering choice (*In re Leshin*, 125 USPQ 416). It would have been obvious to use a weather resistant material to prevent degradation upon exposure.

Allowable Subject Matter

The indicated allowability of claims 3 and 4 is withdrawn. The definition of “wire” has been reconsidered and a new rejection applied above.

Response to Arguments

Regarding Descamp and McAdams, applicant argues that “resiliently flexible” is not taught by the combination. Webster’s dictionary defines “resilient” as capable of withstanding shock without permanent deformation or rupture. Flexible is defined as capable of being flexed, and yielding to influence. The wire stems of McAdams are considered flexible. In light of the accepted definition of “resilient”, wires are considered to meet this limitation in that they are able to withstand shock without permanent deformation or rupture.

The spirally wound wire material of Bowen is considered “resiliently flexible”.

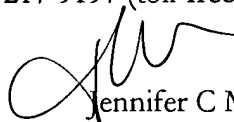
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer C. McNeil whose telephone number is 571-272-1540. The examiner can normally be reached on 9AM-6PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner’s supervisor, Deborah Jones can be reached on 571-272-1535. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jennifer C McNeil
Primary Examiner
Art Unit 1775

JCM